

The Model State Emergency Health Powers Act: An Assault on Civil Liberties in the Name of Homeland Security

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A number of people have asked me what health freedom could possibly have to do with homeland security. Let me assure you that there is a major connection. It's called the Model State Emergency Health Powers Act. Those who have heard of it are far outnumbered by those who have not. And, as proposed, the Model State Emergency Health Powers Act will impact our individual freedoms and civil liberties for years to come.

A HIDDEN AGENDA

In response to the tragedy of September 11, the U.S. Department of Health and Human Services announced its support for model legislation. The goal was to provide federal funds to states to encourage the enactment of legislation to prevent and detect bioterrorist attacks. Drafted for the Centers for Disease Control by academicians from the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities, the so-called Model State Emergency Health Powers Act was released on October 23, 2001.

It is noteworthy that a key attorney who assisted in drafting this proposal was also very involved in Hillary Clinton's health care task force nearly a decade ago. It is also significant that two articles related to this proposal were published or prepared well before the Trade Center attacks. In January 1999, in a Columbia Law Review article, a plan was presented for changing public health laws. A similar plan appeared in an American Journal of Public Health article, published coincidentally in September 2001, but accepted for publication in March 2001.

It appears that this model legislation--formulated long before the terrorism of last fall--actually represents the promotion and expansion of a long-standing agenda. As these proposals come before the individual states, our elected officials should be aware of this history and examine carefully all proposals submitted to them.

Although this model legislation was recommended as a means to help states protect citizens against bioterrorist attacks and deal with national defense issues, the draft bill goes much, much further. It calls for giving state public health officials broad, new police powers--all in the name of controlling epidemics of infectious diseases during public health emergencies.

Furthermore, with an equally broad stroke, this model legislation defines "infectious disease" as "a disease caused by a living organism." As drafted, the October 23, 2001, proposal stresses that

"an infectious disease may or may not be transmissible from person to person, animal to person or insect to person." Thus, any disease caused by a living organism could be classified as an infectious disease creating or invoking a public health emergency.

It is these broad definitions--painted with an overly broad brush in equally broad language--that our state officials and our state-based think tanks must be alerted to, aware of, and involved in examining as similar bills advance on state legislative agendas.

Key to all of this is what may or may not be considered or defined as a "public health emergency."

A THREAT TO FUNDAMENTAL RIGHTS

Under this legislative proposal, once a public health emergency is declared, governors and state public health authorities would be granted greatly expanded police powers. While a few other actions are enumerated, I want to bring to your attention 10 main powers conveyed into the hands of only a very few individuals by this model plan.

Under the Model State Emergency Health Powers Act, upon the declaration of a "public health emergency," governors and public health officials would be empowered to:

1. Force individuals suspected of harboring an "infectious disease" to undergo medical examinations.
2. Track and share an individual's personal health information, including genetic information.
3. Force persons to be vaccinated, treated, or quarantined for infectious diseases.
4. Mandate that all health care providers report all cases of persons who harbor any illness or health condition that may be caused by an epidemic or an infectious agent and might pose a "substantial risk" to a "significant number of people or cause a long-term disability." (Note: Neither "substantial risk" nor "significant number" are defined in the draft.)
5. Force pharmacists to report any unusual or any increased prescription rates that may be caused by epidemic diseases.
6. Preempt existing state laws, rules and regulations, including those relating to privacy, medical licensure, and--this is key--property rights.
7. Control public and private property during a public health emergency, including pharmaceutical manufacturing plants, nursing homes, other health care facilities, and communications devices.
8. Mobilize all or any part of the "organized militia into service to the state to help enforce the state's orders."
9. Ration firearms, explosives, food, fuel and alcoholic beverages, among other commodities.
10. Impose fines and penalties to enforce their orders.

As you can imagine, citizens across the country--at least the ones who were informed about it--were quite concerned about this model legislation. The American Legislative Exchange Council

and other groups immediately began tracking the issue and reporting on how such legislation could affect citizens' individual freedoms and property rights. As Time magazine recently reported, gun activists were some of the strongest and most influential opponents.

Consequently, a revised model bill was released on December 21, 2001. Both models--which the states are using in formulating legislation--are on line at www.publichealthlaw.net. I encourage you to read them.

In an attempt to make the October draft appear less authoritarian, several words were changed in the December draft. For example, the revised language calls for "protecting" persons rather than "controlling" persons during a public health emergency. It says that the state would "manage" private property rather than "control" private property during a public health emergency. And it removes any direct mention of rationing firearms or alcoholic beverages but still retains the right to ration "other commodities," which clearly could be interpreted to include guns and alcoholic beverages--or many other items for that matter.

The revised model bill also contained two major changes. For those who may have been concerned initially about the new police powers granted, the revised text actually broadens them to include local governments as well as state officials. Furthermore, the revised language incorporates powers over medical licensing laws. Thus, health care facilities, doctors, and other providers will have to abide by added licensure requirements during a public health emergency to maintain or guarantee their right to practice medicine or run a health care business.

A DENIAL OF CONSCIENCE

How this medical licensure clause would affect doctors' freedom of conscience--and medical freedom for us all--must be scrutinized.

The state of Maryland's draft bill--one of the worst in the country, in my opinion--includes this language: "If the health care practitioner fails to comply with an order, regulation or directive, the secretary may request the appropriate licensing board to take disciplinary action against the health care practitioner." It goes on to authorize the imposition of fines of up to \$10,000 for each offense.

What does this mean in practicality?

First, it means that a doctor, who might be opposed to abortion, would be forced by law during a public health emergency to administer a vaccine derived from fetal tissue. This legislation lays the groundwork for such a provision, and it clearly and absolutely infringes on doctors' and other health care providers' freedom of conscience.

Second, it means each of us as individuals is affected. Patients would not be able to refuse these treatments. Whether state exemptions--those granted for religious or philosophical reasons regarding selected vaccines or types of treatments--would remain in effect or not remains unclear. This legislation fails to clarify that such exemptions will not be overridden.

RECENT STATE ACTIVITY

According to the American Legislative Exchange Council, 24 states have actually introduced versions of the Model State Emergency Health Powers Act. On their Web site-- www.alec.org--a color-coded map, showing the status of this legislation in all 50 states, is maintained. According to their data, three states--New Mexico, South Dakota, and Utah--have passed legislation. Four states--Idaho, Washington, Wisconsin, and Wyoming--have either inactivated or defeated this legislation.¹

Clearly this legislation is being considered by a significant number of states across the country. It is our duty in the public policy community to help educate, inform, and alert both our state officials and state-based think tank leaders to the challenge to our freedoms and liberties this extreme model legislation will have for years to come.

I truly hope our national leaders will reconsider the coercive provisions of this Model State Emergency Health Powers Act. We can and must find a better way to defend citizens against bioterrorism while protecting our precious individual freedoms--the very freedoms that this current war on terror is being waged to defend.

As a gentleman reminded me recently, "You can't defend freedom by eliminating it." I believe--and believe it should be evident to you--that this model plan, if enacted throughout the states, would indeed do just that: eliminate our freedom to choose our medical care and health treatment and potentially eliminate a broader range of our basic civil liberties.

Sue Blevins is President of the Institute for Health Freedom. Her remarks were delivered at the 25th Annual Resource Bank Meeting in Philadelphia, Pennsylvania.
